after paying some, and thereafter the mortgagee keeps them up on his own account. But here, too, it would seem that the proceeds should be apportioned according to the amount of premiums paid by each.

A recent case raises apparently for the first time the question whether the so-called union mortgage clause [16] in a policy on property mortgaged as a preference introduces a variation.[17] The court held that the mortgagor's trustee in bankruptcy was entitled to the proceeds. *Brown City Savings Bank* v. *Windsor*, 198 Fed. 28 (C. C. A., Sixth Circ.). As the court says, the clause does no more than protect "the mortgagee against the mortgagor's violation of conditions of the policy."[18] Whether it creates a contract directly between the insurer and the mortgagee or makes the latter the beneficiary of a contract between the insurer and the mortgagor, the mortgagee receives the benefit of any payment. If the mortgagor paid the premiums, as in the principal case,[19] his creditors should recover the proceeds.

RECENT CASES.

BANKRUPTCY — POWER SPRINGING FROM NECESSITY — PURCHASER OF PERISHABLE GOODS AFTER ADJUDICATION PROTECTED. — A mining dredge was attached during a process in a New Mexico court. Within four months after the attachment the owner of the dredge was adjudicated a bankrupt in Illinois. Thereafter, but before actual notice of the bankruptcy proceedings had come to the parties in New Mexico, the dredge was sold under a statute by order of the New Mexico court, because it was "of a perishable nature, and liable to be lost or diminished in value before the final adjudication of the case." The trustee of the bankrupt sought to avoid the sale, on the ground that he was vested with title as of the date of adjudication under § 70 of the Bankruptcy Act, and that the filing of the petition was a *caveat* to all the world. *Held*, that the title of the *bonâ fide* purchaser for value prevails over that of the trustee. *Jones* v. *Springer*, 226 U. S. 148, 33 Sup. Ct. 64.

The principal case, to protect the purchaser, invokes the doctrine of a power springing from necessity. Jurisdiction for the application of this doctrine is based on actual custody in situations requiring quick action rather than deliberation. *Jennings* v. *Carson*, 4 Cranch (U. S.) 2; *Baker* v. *Baker*, 1 Ventris

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[16] The principal provisions of such clauses affecting this question are as follows: the loss is payable to the mortgagee as his interest shall appear; the mortgagee's interest is not invalidated by any act or neglect of the mortgagor, provided the former pays, on demand, premiums in default from the mortgagor. It is uniformly held that such a clause gives the mortgagee an interest distinct from the mortgagor. Hastings *v.* Westchester Fire Ins. Co., 73 N. Y. 141; Reed *v.* Firemen's Ins. Co. of Newark, 81 N. J. L. 523, 80 Atl. 462.

[17] In the principal case, the court was concerned with whether the proceeds of the policy were recoverable as a preference, within § 60 of the Bankruptcy Act of 1898; but it seems that the same considerations would apply as in determining whether there was a fraudulent conveyance within the Statute of Elizabeth in the life insurance cases.

[18] See principal case, p. 33.

[19] In the principal case, the mortgagee paid all the premiums, but the mortgage contained a provision that such payments should be a further lien on the premises. In effect, the mortgagor paid them.

313. The sale confers title good against all the world irrespective of notice. *Young* v. *Kellar*, 94 Mo. 581, 7 S. W. 293; *Betterton* v. *Eppstein*, 78 Tex. 443, 14 S. W. 861. This answers the trustee's objection based on the rule that the filing of the petition in bankruptcy is a *caveat* to all the world and in effect an attachment and injunction. *Mueller* v. *Nugent*, 184 U. S. 1, 22 Sup. Ct. 269; *In re Granite City Bank*, 137 Fed. 818. And moreover this rule has been limited by later decisions mentioned with approval in the principal case. *York Mfg. Co.* v. *Cassell*, 201 U. S. 344, 353, 26 Sup. Ct. 481, 484; *In re Rathman*, 183 Fed. 913, 924, 925. With the element of necessity absent, it is submitted that the trustee should prevail, because, whether the bankruptcy proceedings are a *caveat* or not, the purchaser cannot save himself by the proviso of § 67 f of the Bankruptcy Act, which protects a purchaser for value, who obtains title by an attachment without notice or reasonable cause for inquiry, since the adjudication dissolved the lien and the entire title and interest was vested in the trustee. BANKRUPTCY ACT OF 1898, §§ 67, 70. Therefore the purchaser would take nothing which could be protected.

BANKRUPTCY — PREFERENCE — INSURANCE OF PROPERTY PREFERENTIALLY MORTGAGED, AS A PREFERENCE. — An insolvent company mortgaged property under circumstances rendering the mortgage voidable as a preference under § 60 of the Bankruptcy Act of 1898. An insurance policy was taken out, containing a standard mortgagee clause, and the mortgage provided that if the mortgagee should pay any premiums, the sum so paid should be a further lien on the premises. The mortgagee paid all the premiums. After a loss, the insurance company paid the mortgagee. *Held*, that the mortgagor's trustee in bankruptcy can recover the proceeds of the policy from the mortgagee. *Brown City Savings Bank* v. *Windsor*, 198 Fed. 28 (C. C. A., Sixth Circ.). See NOTES, p. 362.

BILLS AND NOTES — CERTIFIED CHECKS — EFFECT IN DISCHARGING MAKER WHEN CERTIFIED AT HIS INSTANCE. — The drawer of a check procured its certification by the bank before delivering it to the payee. The bank closed the following day and the check was dishonored on presentment. *Held*, that the drawer is liable on the check. *Davenport* v. *Palmer*, 137 N. Y. Supp. 796 (Sup. Ct., App. Div.).

Certification of a check at the instance of the holder discharges the drawer. *Metropolitan National Bank of Chicago* v. *Jones*, 137 Ill. 634, 27 N. E. 533; *First National Bank of Jersey City* v. *Leach*, 52 N. Y. 350. By the great weight of authority, however, the drawer is not discharged when the certification has been at his own instance. *Born* v. *First National Bank of Chicago*, 123 Ind. 78, 24 N. E. 173; *Bickford* v. *First National Bank of Chicago*, 42 Ill. 238. But see *First National Bank of Washington* v. *Whitman*, 94 U. S. 343, 345. Two reasons are advanced for releasing the drawer of a check certified in the holder's hands, while the drawer of a bill of exchange continues secondarily liable after acceptance by the drawee: first, the payee foregoes his right to receive the money due him and takes instead the liability of the bank; second, a certified check is regarded in business practically as a bank note, and as the funds in the bank are beyond the drawer's control presumably the payee does not rely on the drawer's extraordinary liability as surety. The latter reason applies equally to a check certified in the drawer's hands, with such force that the absence of the former reason in addition is not enough to justify the different rules of law. Furthermore, as the instrument is the same on its face in both cases, an indorsee, if the principal case is to be followed, could not know what obligation he is buying, and suit would often have to be brought against the drawer before the facts could be ascertained. See 6 HARV. L. REV. 138. The distinction, however, is embodied in the Negotiable Instruments Law,